

1 Philip L. Pillsbury, Jr. (SBN 72261)
2 Vedica Puri (SBN 176252)
3 Eric K. Larson (SBN 142791)
4 PILLSBURY & LEVINSON, LLP
5 The Transamerica Pyramid
6 600 Montgomery Street, 31st Floor
7 San Francisco, CA 94111
8 Telephone: (415) 433-8000
9 Facsimile: (415) 433-4816
ppillsbury@pillsburylevinson.com
vpuri@pillsburylevinson.com
rlarson@pillsburylevinson.com
10 Attorneys for Plaintiff
11 COPART INC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

COPART INC.,) Case No. C 07 2684 CW
Plaintiff,)
vs.)
CRUM & FORSTER INDEMNITY)
COMPANY, UNITED STATES FIRE)
INSURANCE COMPANY, and DOES 1-10,)
Inclusive,)
Defendants.)
UNITED STATES FIRE INSURANCE)
COMPANY,)
Counterclaimant,)
vs.)
COPART, INC.,)
Counterdefendant.)

1 **1. Jurisdiction and Service.**

2 Defendants removed to this Court on the basis of diversity jurisdiction. Plaintiff
 3 Copart, Inc. does not challenge the Court's jurisdiction. All parties have been served. By
 4 order upon stipulation, defendant Crum & Forster Indemnity Company has been dismissed
 5 without prejudice. The remaining defendant is United States Fire Insurance Company
 6 ("USFIC").

7 **2. Facts.**8 *a. Brief Chronology*

9 Copart is headquartered in Fairfield, California and provides vehicle suppliers with a
 10 full range of online services to process and sell salvaged vehicles. As part of its online auto
 11 salvage business Copart owns lots across the country, including several lots in Florida. In
 12 October of 2005, Hurricane Wilma struck southeastern Florida and damaged three of
 13 Copart's locations. A location in the Miami area known as Yard 105 suffered the most
 14 damage.

15 At the time of the hurricane, Copart was insured by a commercial property insurance
 16 policy issued by USFIC. Copart made a claim under the USFIC policy for its hurricane
 17 losses. Subject to the policy deductible, USFIC paid for the losses at two of the affected
 18 yards. However, USFIC denied coverage for damage to the buildings at Yard 105. Copart
 19 contested USFIC's position and filed this action.

20 *b. Principal Factual Issues*21 (i) According to Copart

22 Copart has had property coverage under policies issued by USFIC beginning with the
 23 October 1, 2003-2004 policy period. The policies cover direct physical loss of or damage to
 24 premises described in the policy declarations, including buildings thereon. As part of the
 25 application process, including the application process for the October 1, 2005 renewal,
 26 Copart was required to submit a statement of values chart that listed Copart's property
 27 locations. The statement of values chart set forth the Yard number, its physical street
 28 address, and estimated values for building and improvements, contents, computer equipment,

1 business interruption/extra expense, and inventory exposure. It also included a column for
 2 "Location Total Value". The statement of values form was not incorporated into nor attached
 3 to the policy.

4 As part of the renewal process for the October 1, 2005-2006 policy period, Copart
 5 submitted a statement of values form dated September 14, 2005 that listed Yard 105,
 6 identified its address as 11858 Northwest 36 Avenue, Miami, Florida and included an
 7 inventory exposure value of \$1,297,500 and a location total value of \$1,297,500. The
 8 columns for building and improvements, contents, computer equipment and business
 9 interruption were blank. USFIC is relying on this fact alone to contend that there is no
 10 coverage for the buildings on Yard 105 under the Property Policy.

11 Copart contends that the statement of values form was provided only to form a basis
 12 from which USFIC calculated premiums. Copart contends that there is no policy language to
 13 support the position that coverage for Yard 105 is excluded or that coverage limits are set
 14 forth in the statement of values form that is not a part of the policy; the policy is an "all risk"
 15 policy and Copart is entitled to the full replacement cost and other associated damages related
 16 to the loss and damage to the buildings on Yard 105. Even if the Property Policy is
 17 ambiguous it must be construed in favor of coverage. Copart contends that USFIC's
 18 interpretation of the policy is unreasonable and that its claims handling was in bad faith.
 19 Copart also contends that USFIC is guilty of oppression, fraud and malice in, among other
 20 things, taking a position adverse to its insured with no reasonable basis for doing so.

21 (ii) According to USFIC

22 USFIC is unable to agree with Copart's statement of the factual issues because the
 23 issues identified by Copart are issues of contract interpretation, which are issues of *law*.
 24 Furthermore, Copart misunderstands the legal issues USFIC intends to raise. USFIC believes
 25 the legal issues will be completely dispositive; but if they should not, the factual issues most
 26 likely to arise would include: (1) the subjective intent of the parties as to what property and
 27 other exposures the policy would cover; and (2) whether Copart misrepresented the values of
 28 those exposures.

1 3. **Legal/Equitable Issues.**

2 (1) The interpretation of the contract. USFIC contends that buildings at Yard 105
 3 are not "Covered Property" within the meaning of the policy. Copart contends that the
 4 buildings are "Covered Property."

5 (2) USFIC's claim for reformation (if and only if the Court agrees with Copart's
 6 interpretation of the contract).

7 4. **Motions.**

8 There are no prior or pending motions. USFIC anticipates a motion for summary
 9 judgment on all causes of action asserted in the complaint. Copart anticipates a cross-motion
 10 for partial summary judgment on the issue of coverage, and potentially, a motion for
 11 summary judgment on USFIC's counterclaim.

12 5. **Amendment of Pleadings.**

13 The parties do not expect any amendments at this time. The parties propose the
 14 following deadline for amending the pleadings: January 15, 2008.

15 6. **Evidence Preservation.**16 a. *Copart's Statement.*

17 Other than Copart's copies of the policies themselves, some application materials, and
 18 correspondence between counsel, most of the relevant documents in Copart's possession,
 19 custody or control are comprised of emails between Copart and Marsh, and attachments
 20 thereto. Copart has diligently been accumulating all emails by and among (a) its personnel
 21 who were involved in obtaining insurance coverage, (b) Marsh, and (c) Crum & Forster.
 22 However, Copart's emails prior to July 1, 2005 are inaccessible on main corporate servers
 23 and not on back up tapes. On July 4, 2005 Copart changed its corporate email server. Most
 24 users started fresh on the new system without data migration. The old server only hosted
 25 email temporarily until it was retrieved. Sent email was not copied or backed up. Therefore,
 26 emails prior to July 2005 would exist only on a Copart employee's local PC. There are three
 27 key Copart personnel who were involved in obtaining property insurance -- Simon Rote,
 28

1 William Franklin and Michael Carson. Therefore, Copart has searched the local PCs of these
 2 three individuals and has secured relevant emails, including those pre-July, 2005.

3 Also, Copart believes that any relevant emails that may have been lost in its server
 4 conversion will likely exist in the possession of either Marsh or Crum & Forster.

5 Copart objects to USFIC's failure to take any specific steps to preserve electronically
 6 stored information.

7 b. *USFIC's statement.*

8 USFIC's underwriters and claims examiners maintain physical underwriting and claim
 9 files. By custom and practice, electronically-generated documents (including e-mail) are
 10 printed and placed in the files. All of the physical underwriting and claims files pertaining to
 11 Copart have been maintained by USFIC. So far as counsel has been able to determine, the
 12 physical files contain hard copies of all documents that may be relevant to this action, and to
 13 the extent that a few emails between USFIC and an intermediary in the policy placements
 14 (Marsh, Inc.) may not have been printed by USFIC, they will likely be found in Marsh's files.
 15 Thus, USFIC believes that all pertinent documents electronically created by USFIC can be
 16 produced in hard-copy format and that no electronic discovery will be necessary.
 17 Accordingly, USFIC has not taken any specific steps to preserve electronically-recorded
 18 material. USFIC so informed Copart at two Rule 26(f) conferences and received no objection
 19 then, but USFIC will reevaluate its situation in light of the apparent objection stated above.

20 7. Disclosures.

21 Both parties have served Initial Disclosures disclosing the matters set forth in FRCP
 22 26a(1)(A-D).

23 8. Discovery.

24 a. *To date.*

25 Informally, each side has provided some documents to the other. USFIC has
 26 propounded formal requests for production of some additional documents. USFIC has also
 27 propounded a first set of interrogatories. Copart will shortly propound a request for
 28 production of documents.

1 b. *Scope of anticipated discovery.*

2 Generally, discovery is anticipated regarding the parties' intentions as to the terms of
 3 the insurance contract, the extent and valuation of the alleged losses at Yard 105, USFIC's
 4 investigation of and reasons for denying the claim for those losses, and the completeness and
 5 accuracy of Copart's representations as to the insurable values at all of its locations.

6 c. *Proposed limitations or modifications of the discovery rules.*

7 Several current or former employees of Marsh, Inc. have knowledge relevant to both
 8 parties' claims and defenses. The parties disagree to some extent on the nature of the role
 9 played by Marsh in the placement of the policies; thus, it is difficult to determine with which
 10 party Marsh should be considered affiliated. The parties will agree to allocate Marsh
 11 witnesses so that each party will be within the "ten deposition per side" rule.

12 The parties will agree to a form of protective order to govern documents that have
 13 been or may be produced.

14 In the event that either party should seek to depose the other party's inhouse counsel,
 15 each side reserves the right to seek a protective order prohibiting or limiting the deposition.

16 d. *Proposed discovery plan.*

17 Having stipulated to participate in a private mediation within 90 days of the Case
 18 Management Conference, the parties agree that discovery during that period will be limited to
 19 requests for production of documents, interrogatories, and records subpoenas to non-parties.
 20 In the event that the case does not resolve through ADR, then the parties will proceed with
 21 any other discovery permitted by rule.

22 9. **Class Actions.**

23 Not applicable.

24 10. **Related Cases.**

25 None.

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11. **Relief.**2 a. *Sought by Copart.*3 Copart's *preliminary* estimate of damages, subject to change, is as follows:

4 Cost to repair damaged smaller building on Yard 105:	\$ 43,110.27
5 Cost associated with demolition of condemned larger building:	\$119,925.59
6 Cost of temporary operating facility:	\$120,711.31
7 Cost to replace condemned and destroyed larger building:	\$1,307,500.00
8 Total:	\$1,591,247.17

9 Copart also seeks prejudgment interest, its attorneys fees and costs incurred in
10 obtaining wrongfully withheld coverage, and punitive damages.

11 b. *Sought by USFIC.*

12 In the event that coverage is found under the policy as written, and in the event that
13 reformation is denied, USFIC will seek damages for Copart's misrepresentation of its total
14 insurable values ("TIV"). The damages will be the additional premiums that USFIC would
15 have charged and received (plus interest) had the TIV been accurately represented. Presently,
16 USFIC is unaware of the full extent of Copart's misrepresentations. Thus, USFIC is not yet
17 able to calculate its damages. The calculation will be based on documents USFIC has
18 requested from Copart concerning Copart's true TIVs at the times the premiums for the
19 policies were determined.

20 12. **Settlement and ADR.**

21 The parties have stipulated to private mediation to be conducted within 90 days.

22 13. **Consent to Magistrate Judge For All Purposes.**

23 The parties will not consent to a magistrate judge for all purposes.

24 14. **Other References.**

25 Not applicable.

26 15. **Narrowing of Issues.**

27 The issues in the case may be narrowed or even completely disposed of by the
28 anticipated cross-motions for summary judgment. In the event that trial is necessary, and if at

1 the time of trial any legal or equitable issues remain, USFIC will move to "phase" the trial so
 2 that issues triable to the Court will be tried first, followed (if necessary) by issues triable to
 3 the jury. Copart will evaluate any such motion for opposition or non-opposition.

4 **16. Expedited Schedule.**

5 This case is not appropriate for handling on an expedited basis.

6 **17. Scheduling.**

7 The parties propose the following dates:

8 Fact Discovery Cut Off:	April 29, 2008
9 Designation of Experts and Exchange of Reports:	May 30, 2008
10 Designation of Rebuttal Experts	June 30, 2008
11 Expert Discovery Cut Off:	July 30, 2008
12 Last Date For Hearing on Dispositive Motions:	July 30, 2008
13 Pretrial Conference:	September 2008
14 Trial:	October 2008

15 **18. Trial.**

16 Copart has demanded a jury trial and expects the trial to last for two weeks.

17 **19. Disclosure of Non-party Interested Entities or Persons.**

18 USFIC filed a "Certification of Interested Entities or Persons" with its Notice of
 19 Removal. Said certification advised:

20 United States Fire Insurance Company (Delaware) and
 21 Crum & Forster Indemnity Company (Delaware) are
 22 wholly owned by Crum & Forster Holding Inc.
 23 (Delaware), which is wholly owned by Crum & Forster
 24 Holdings Corp. (Delaware), which is wholly owned by
 25 Fairfax Inc. (Wyoming). 48.10% of Fairfax Inc. is owned by
 26 FFHL Group Ltd. (Canada) and 51.90% is owned by
 FFHL S.a.r.l. (Luxembourg). FFHL S.a.r.l. is wholly
 owned by FFHL Group Ltd. FFHL Group Ltd. is wholly
 owned by Fairfax Financial Holdings Limited (Canada).
 Fairfax Financial Holdings Limited (Canada) is the only
 publicly traded company.

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1 Copart filed a "Certification of Interested Entities or Persons" that stated, "Pursuant to
2 Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties,
3 there is no such interest to report."

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5 Dated: August 28, 2007

PILLSBURY & LEVINSON, LLP

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By: /s/ Vedica Puri

Philip L. Pillsbury, Jr.

Vedica Puri

Eric K. Larson

Attorneys for Plaintiff and Counterdefendant
COPART INC.

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Dated: August 28, 2007

BULLIVANT HOUSE BAILEY PC

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By: /s/ Samuel H. Ruby

Samuel H. Ruby

Attorneys for Defendant and

Counterclaimant

UNITED STATES FIRE INSURANCE
COMPANY

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